

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

**CHRISTOPHER JOHN J. SAVOIE,
et al.,**

Plaintiffs,

v.

**JUDGE JAMES G. MARTIN, III,
et al.,**

Defendants.

**Case No. 3:10-cv-00327
JUDGE TRAUGER**

**MOTION TO DISMISS
OF DEFENDANT JUDGE JAMES G. MARTIN, III**

Pursuant to Fed. R. Civ. P. 12(b)(6), Judge James G. Martin, III, in his individual and official capacity, by and through the undersigned, moves to dismiss the Complaint filed against him. The grounds for this motion are as follows:

- The Complaint fails to state a claim upon which relief may be granted.
 - The Complaint against Judge Martin in his individual capacity is barred by judicial immunity, under both 42 U.S.C. § 1983 and state tort theories.
 - The Complaint against Judge Martin in his official capacity should be dismissed.

It is barred by 11th Amendment immunity. Further, the State, sued through Judge Martin in his official capacity, is not a “person” who may be sued under 42 U.S.C. § 1983. The doctrine of sovereign immunity bars money damages against Judge Martin in his official capacity as to the state tort claims.

- The *Rooker-Feldman* doctrine bars any request for injunctive and declaratory relief that would alter any judgment in the *Savoie* case in state court. Alternatively, if the Complaint is asking the Court to intervene in any ongoing proceedings in that case, then the doctrine of abstention bars such relief.

In support of this motion, Judge Martin relies on the memorandum of law filed contemporaneously herewith, and the complete copy of the transcript of the Hearing on Temporary Restraining Order taken on March 30, 2009, a portion of which is attached to the plaintiff's Complaint as Exhibit B.

Respectfully submitted,

ROBERT E. COOPER, Jr.
Attorney General and Reporter

s/Martha A. Campbell
MARTHA A. CAMPBELL #14022
Associate Deputy Attorney General

s/Mary M. Bers
MARY M. BERS #013159
Senior Counsel

Civil Rights & Claims Division
Cordell Hull Building, Second Floor
P. O. Box 20207
Nashville, TN 37214
(615) 532-2558

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2010, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Timothy A. Tull BPR#281113
Tull Law Firm, PLLC
5083 Main Street
Spring Hill, Tennessee 37174

Garry K. Grooms #012647
Stites & Harbison, PLLC
SunTrust Plaza
401 Commerce Street, Suite 800
Nashville, Tennessee 37219-2376

s/ Martha A. Campbell
MARTHA A. CAMPBELL
TBPR# 14022
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 532-2558